*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.12620 of 1997

% 22-12-2004

M/s Andhra Pradesh Fisherman's Association

Represented by its Secretary V.Madhusudan

.. Petitioner

Vs.

The Government of Andhra Pradesh

Represented by its Principal Secretary,

Irrigation & Command Area Development

Department,Secretariat, Hyderabad.

.. Respondent

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Mr. V.V.N.Narasimham

^ Counsel for respondent : Government Pleader for Irrigation

& Command Area Development.

?CASES REFERRED :

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 12620 of 1997

Between:

M/s Andhra Pradesh Fisherman's Association

Regd.No.315, having its Office at 3-6-21, Indira Nagar ,
Ramanthapur , Hyderabad rep. by its secretary V.Madhusudhan

s/o Veeraswamy, 50 years,R/o Karimnagar.

..... PETITIONER

AND

The Government of A.P Rep by its Principal Secretary
Irrigation & Command Area Development (CAD) Department ,

Secretariat ,Hyderabad

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in nature of writ of mandamus declaring the action of the respondents in not including the fisherman as voters under Act 11 of 97 as arbitrary, illegal, improper and unconstitutional and consequently direct the respondents herein to include all the fishermen as members of the petitioners association as voters under Act 11 of 97 by deleting clause 2(1)(a) of the Act 11 of 1997.

Counsel for the Petitioner: MR.V.V.N.NARASIMHAM

Counsel for the Respondent.: GP FOR IRRIGATION & COMMAND

AREA DEVELOPMENT

The Court made the following:

O R D E R:

The Andhra Pradesh Fishermen's Association filed the present Writ Petition for a writ, order or direction, more particularly one in the nature of Writ of mandamus declaring the action of the respondents in not including the fishermen as voters under the A.P. Farmers' Management of Irrigation Systems Act, 1997 (Act 11 of 1997) (hereinafter called as "the Act" for the purpose of convenience) as arbitrary, illegal, improper and unconstitutional and consequently direct the respondents herein to include all the fishermen as members of the petitioners association as voters under the Act by deleting Clause 2(1)(a) of the Act and pass such other suitable orders.

It is stated that the petitioner-Association has been agitating in this regard and also made certain representations. Several other allegations have also been specified in the affidavit filed in support of the Writ Petition. It is averred that the petitioner's Association is having more than 3 lakh members all over the State of Andhra Pradesh. The petitioner-Association has been agitating for the formation of Water Users Association. Accordingly the State of Andhra Pradesh has enacted the Act forming the Water Users Association in the State of Andhra Pradesh and as the members of the petitioner-Association are interested, they submitted a representation to the Revenue Ministry as well as to the Hon'ble Chief Minister seeking inclusion of the fisherman also as the members of the said Water Users Association. Though the Hon'ble Chief Minister assured the petitioner's Association that proper representation will be given to the members of the petitioner's Association, the same had not been done while preparing the said Enactment. It is averred that the main source of the members of the petitioner-Association is fish farming and it is dependent on monsoon. As the Indian monsoons are irregular, the members of the petitioner-Association are depending upon the tanks such as large

tanks, medium tanks and major tanks. It is also averred that the fishermen depend on irrigation water and therefore they have got the customary right on the irrigation water and for this reason the fishermen and the ryots are always having differences with regard to the usage of the irrigation water. It is further averred that though in the Act the Government made all the persons who are using the irrigated water as the members of the said Association, the Government had given rights only to those persons who are possessing ryotwari pass books or in other words landholders alone are given the eligibility for voting and contesting the elections. The fishermen are not given any pass books determining them as the landholders. The entire profession of the fishermen depends upon the irrigated water. The maintenance etc., of the said tanks also will have effect on the fishermen but the Government had failed to consider the same. Therefore, non-inclusion of the fishermen in the voters list and not making them the members of the said Association is violative of Article 14 of the Constitution of India.

It was further averred that as per Section 3(4) of the Act, every Water Users Association shall consist of (i) all the water users who are land holders in a water users area; (ii) all the other water users co-opted in a water users area; (iii) members specified in clause (i) and (ii) and shall constitute the general body for a Water Users Association. It means all the users of the irrigated water by way of tanks etc., are eligible to become the members of the said Association. However, as per sub-clause (v) of Section 3(4), only members specified in clause (i) are eligible for voting right and the said Act making only the members who are landholders eligible for voting right is discriminatory. It is also further averred that as per the Act specified supra, to elect the members, President etc., of the said Association, the concerned District Collector or the Authorised Officer has to issue notification as appended to the Rules by demarking the boundaries of territorial constituencies in the area of operation by preparing a rough sketch indicating the distribution system by showing the survey numbers of the lands situate in each of such territorial constituency in Form-A and the same has to be displayed together with such map or sketch on the notice board of the Gram Panchayat and the Mandal Parishad under sub-rule (2) for information of the land holders. It is further averred that objections or suggestions against the delineation of water users area or the division of territorial constituencies, if any, shall be filed by the land holders in the area of operation before the District Collector or an officer nominated by him in this behalf within a period of two days excluding the date of display and if any objections were received

by any persons, the same shall be considered by giving reasons and a final map or sketch has to be displayed in the office of the Gram Panchayat and Mandal Parishad in Form “AA” by the District Collector or by the authorized officer. In the instant case, the District Collector had not at all prepared the said sketch or displayed the same in the Gram Panchayat or called for the objections if any. It was further averred that the Collector had not at all prepared the territorial constituencies as per the said Rules and without preparing the said notification or without issuing the said notification demarking the constituencies, the Collector had issued a notification for electing the members of the Association. Further they had also not notified or displayed the said voters list in the Gram Panchayat office. It was also further averred that while preparing the voters list the respondents had taken only those persons who are possessing the ryotwari pass books as the landholders and eliminated the rest of them to include them as voters. A fisherman who is fishing in the tank is entitled to become a voter in the Association and instead of doing so, the respondents had eliminated such fishermen basing on their own suggestions. As per sub clause (i) of Section 2(1) of the Act the area of operation in relation to farmers organization means a contiguous block of land in the command area of an irrigation system as may be notified under the Act. The areas were notified decades back and new command area came into existence under various projects, major and minor, in lakhs of acres and the water cess is collected from the cultivators. It was also further averred that the list of voters list prepared by the officials was not brought to the notice of the fishermen or the Gramp Panchayat or by any other method of publicity. Therefore, the fishermen could not file their objections to the said list within the stipulated period and thus there was no proper publication of the voters list. Further, the respondents had taken only the names of those persons who are possessing the ryotwari pass books alone and included them in the voters list. In such circumstances, the Writ Petition was filed for the relief specified supra.

Act 11 of 1997 is an Act to provide for Farmers’ participation in the management of Irrigation Systems and for matters connected therewith or incidental thereto. Section 2 of the Act deals with definitions and Section 2(1)(d) defines ‘competent authority’ as the authority appointed under Section 21. Section 2(1)(p) of the Act defines ‘irrigation system’ as hereunder:

> “irrigation system means such major, medium and minor irrigation system for harnessing water for irrigation and other allied uses from

Government/or Corporation source and includes reservoirs, open head channels, diversion systems, anicuts, lift irrigation schemes, tanks, wells and the like".

Section 2(q) of the Act defines 'land holder' as hereunder:

"land holder means an owner and or a tenant recorded as such in the record of rights under the Andhra Pradesh Record of Rights in Land Act 1971 in respect of land in the notified ayacut area of an irrigation system".

Section 2(w) of the Act defines 'water allocation' as hereunder:

"water allocation in relation to an irrigation system means distribution of water determined from time to time by a farmers' organization in its area of operation".

Section 2(1)(x) of the Act defining 'water user' reads as hereunder:

"water user means and includes any individual or body corporate or a society using water for agriculture, domestic, power, non-domestic, commercial, industrial or any other purpose from a government or the corporation source of irrigation".

Section 2(2) of the Act specifies that the words and expressions used in this Act, but not defined, shall have the same meaning assigned to them in the Andhra Pradesh Irrigation Utilization and Command Area Development Act, 1984, Act 15 of 1984. Section 3 of the Act deals with Delineation of water users' area and constitution of an association. Section 3(4) of the Act reads as hereunder:

"Every water users' association shall consist of the following members, namely:-

(i) all the water users who are land holders in a water users area;

Provided that where both the owner and the tenant are land holders in respect of the same land, the tenant;

(ii) all other water users co-opted in a water users' areas;

(iii) members specified in clause (i) and (ii) shall constitute the general body for a

water users association;

(iv) a person eligible to become a member of more than one territorial constituency of a water users association under clause (i) shall be entitled to be a member of only one territorial constituency and he shall exercise his option thereof as prescribed;

(v) members specified in clause (1) shall alone have the right to vote."

It is pertinent to note that sub-section 4(i) specifies every water users' association shall consist of all the water users who are land holders in a water users area. The proviso says that provided that where both the owner and the tenant are land holders in respect of the same land, the tenant shall be the member. Sub-section 4(iv) specifies that a person eligible to become a member of more than one territorial constituency of a water users association under clause (i) shall be entitled to be a member of only one territorial constituency and he shall exercise his option thereof as prescribed. Sub-section 4(v) specifies that members specified in clause (i) shall alone have the right to vote. Sub-section 4(ii) also specifies that all other water users co-opted in a water users areas shall be the members.

In the light of the said provisions referred to supra, the non-inclusion of the names of the fishermen in the voters list cannot be said to be not in accordance with law. The settled principle is that Courts cannot legislate. By and large it is for the Legislature to legislate and to rectify the lacunae if any by bringing any suitable Amendments. The doctrine of causos omissus in the realm of interpretation of statutes also is well settled. When the provisions of the statute are clear and categorical, normally the Courts cannot substitute or supply the words and the Courts may have to interpret the provisions of the statute as they stand on the statute book and not beyond thereto. In the light of the above observations, liberty is given to the writ petitioner to ventilate the grievances if any by making appropriate representations. Except making the aforesaid observations, no other relief can be granted in the Writ Petition.

The Writ Petition is disposed of accordingly. No order as to costs.

Dated: 22-12-2004. **P.S. NARAYANA, J**

L.R. copy to be marked : YES / NO

Ccm/AM

To

1. One fair copy to the Hon'ble Mr Justice P.S. Narayana (For his lordships kind perusal).

2. The Principal Secretary, Government of A.P. Irrigation & Command Area Development Department , Secretariat , Hyderabad

3.. 2 CCs to GP for Irrigation and Command Area Development, High Court Buildings, Hyderabad (OUT)

4. 2 CD copies.

5. The under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates Assoiation Library, High court Buildings, Hyderabad.

7. 8 LR copies.